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CHARLES ELMORE

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

NO. [redacted] 40

STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI COMPOSED OF LESTER C. FRANKLIN, CHAIRMAN, HOMER H. CASTEEL AND WEBB WALLEY,

GEO. T. MITCHELL, ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI,

Appellants,

VS.

INTERSTATE NATURAL GAS COMPANY, INCORPORATED,

Appellee.

APPELLANTS' STATEMENT AS TO JURISDICTION ON APPEAL.

GEO. T. MITCHELL,
Attorney General

J. A. LAUDERDALE,
Assistant Attorney General.

E. R. HOLMES, Jr., of Counsel
Special Agent.

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IN THE

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NO. 833

STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI COMPOSED OF LESTER C. FRANKLIN, CHAIRMAN, HOMER H. CASTEEL AND WEBB WALLEY,

GEO. T. MITCHELL, ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI,

Appellants,

VS.

INTERSTATE NATURAL GAS COMPANY, INCORPORATED,

Appellee.

STATEMENT AS TO JURISDICTION ON APPEAL.

MAY IT PLEASE THE COURT:

The appellants in support of the jurisdiction of this Court to review the above styled cause on appeal, respectfully present:

A

STATUTORY PROVISION SUSTAINING JURISDICTION.

The Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 936, 938, provides that Sections 238 and 266 of the Judicial Code are amended to read as follows:

"Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or

decree of a district court may be had where it is so provided in the following sections and not otherwise."

"Sec. 266. No interlocutory injunction suspending or restraining the enforcement, operation or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the aplication for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: Provided, however, that one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the

suit: Provided, that if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State Courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the dis-

trict court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

B

DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL

The decree sought to be reviewed was entered on the 20th day of February, 1931.

The application for appeal was presented on the 28th day of February, 1931.

C

NATURE OF CASE AND RULING BELOW.

This is an appeal from a final decree of the United States District Court, Southern District of Mississippi, three judges sitting in the cause wherein the appellee filed a bill of complaint against the appellants to enjoin the enforcement of Chapter 88, Laws of 1930, and more especially Section 163 of said act. Said section requires persons engaged in the business of operating a pipe line in Mississippi to pay a privilege tax, said tax to be measured by the size and number of miles of pipe owned and operated by the tax payer within the State of Mississippi. Said act authorizes the State Tax Commission to enforce the provisions thereof.

It is alleged in said bill that the appellee is a corporation organized and existing under and by virtue of the laws of the State of Delaware; that it operates a pipe line

originating in Louisiana, running into and through Mississippi; that it sells natural gas in wholesale quantities to two distributors in Mississippi; that all of it operations in and through Mississippi are in interstate commerce, and that the amount in controversy exceeds the sum of $3,000, exclusive of interest and cost.

The basis for the relief prayed for is the claim that the above act of the Legislature of the State of Mississippi is unconstitutional and void because:

First: Said act violates the provisions of Article 1, Section 8, Clause 3 of the Constitution of the United States in that it attempts to impose a license, place a burden, interfere with, obstruct and/or regulate interstate commerce.

Second: Said act is an attempted usurpation of the powers delegated to the Congress of the United States by the Constitution of the United States.

After hearing said cause the said Court, composed of Honorable Rufus E. Foster, Circuit Judge, Honorable Edwin R. Holmes and Honorable Wayne G. Borah, District Judges, held that said act as applied to appellee violated the section of the Constitution of the United States hereinbefore named, as appellee was engaged solely in interstate commerce in the State of Mississippi, and enjoined the appellants from enforcing said act.

D

CASES BELIEVED TO SUSTAIN JURISDICTION.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Moore v. Fidelity & Deposit Co., 272 U. S. 317, 320-321; *Smith v. Wilson*, 273 U. S. 388; *Ex Parte Butler*, 271 U. S. 461, 465; *State Board of Tax Commissioners vs. Jackson*, No. 183, October Term 1930.

We respectfully submit that this Court has jurisdiction of the appeal by virtue of Sections 238 and 266 of the Judicial Code, as amended by the Act of February 13, 1925.

Respectfully submitted,

GEO. T. MITCHELL,
Attorney General

J. A. LAUDERDALE,
Assistant Attorney General

E. R. HOLMES, Jr., of Counsel
Special Agent.